IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

SA.No. 853 of 2002(B)

AS.50/1992 of ADDL.DISTRICT COURT,KOTTAYAM
OS.5/1987 of MUNSIFF COURT, VAIKOM

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APPELLANT: APPELLANT/PLAINTIFF

NARAYANAN RAGHAVAN ACHARI,
EDATHICHIRAYIL HOUSE, CATTIKUNNU MURI,
CHEMPU VILLAGE.

BY ADV. SRI.ANIL THOMAS (MELEMALAYIL)
JOSE ABRAHAM,
SIJU P.KURIAKOSE
ANILKUMAR

RESPONDENTS: RESPONDENTS/DEFENDANTS

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1. GOURIVIJAYAMMA, ATTUVANCHIKKAT,
S.PARAVUR, MANAKUNAM VILLAGE, ERNAKULAM DISTRICT.

2. BINU S/O. VIJAYAMMA, ATTUVANCHIKKAT,
S.PARAVUR, MANAKUNNAM VILLAGE, ERNAKULAM DISTRICT
(Deleted)

3. AYYAPPAN MADHAVAN, ATTUVANCHIKKAT,
S.PARAVUR, MANAKUNNAM VILLAGE, ERNAKULAM DISTRICT
(Deleted)

4. GOURI, ATTUVANCHIKKAT, S.PARAVUR,
MANAKUNNAM VILLAGE, ERNAKULAM DISTRICT.

(THE RESPONDENTS NOS.2 AND 3 ARE DELETED FROM PARTY ARRAY AT THE RISK OF THE PETITIONER VIDE ORDER DATED 22.9.06 IN I.A.1809/06.)

BY ADV.C.K.ARAVINDAKSHA MENON FOR 1 & 4
SRI.A.BALAGOPALAN
SRI.K.C.CHARLES FOR R1
SRI.PRAKASH P.GEORGE

THIS SECOND APPEAL HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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S.A. NO.853 OF 2002

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Dated this the 29th day of June, 2007

JUDGMENT

Appellant is the plaintiff in O.S.5/1987 on the file of Munsiff Court, Vaikkom. Respondents are the defendants. Respondents 2 and 3 were subsequently deleted by the appellant stating that they are no more and other respondents are their legal heirs. Second defendant is the son and defendants 3 and 4 are the parents of the first defendant. Appellant was admittedly living with first defendant as husband and wife under a registered agreement. Second respondent was born in that relationship. When the relationship got strained, appellant desserted them. Respondents 1 and 2 claimed maintenance under section 125 of Code of Crl. Procedure contending that first respondent is the wife and the second respondent, the son of appellant. Courts finally found that second respondent is the son, though on the failure

of first respondent to prove the legal marriage, her status as the legally wedded wife was not upheld. The suit was filed by the appellant seeking a decree for mandatory injunction contending that plaint A schedule property belongs to him as per Ext.A1 patta obtained from the Taluk Office and respondents have no manner of right over the same. Respondents denied the title and also claimed that they are entitled to get kudikidappu right. Though the claim for kudikidappu was referred to the Land Tribunal under section 125(3) of Kerala Land Reforms Act, Land Tribunal found it against first respondent. The trial court on the evidence found that appellant has admitted that he did not enter into the plaint schedule property after 1980 and Ext.B1 judgment shows that earlier suit filed by appellant for injunction was dismissed and therefore held that appellant is not entitled to the decree for mandatory injunction sought for. The suit was dismissed. Appellant

challenged the decree and judgment before Additional District Court, Kottayam in A.S.50/1992. Learned District Judge on reappreciation of evidence found that evidence would establish that appellant did not even enter into the plaint schedule property after 1980 and it has been in the possession of the respondents and in such circumstance, appellant is not entitled to the decree for mandatory injunction. The appeal was dismissed. It is challenged in this second appeal.

2. Learned counsel appearing for the appellant was heard.

3. On hearing learned counsel and on going through the judgments of the courts below, I do not find any substantial question of law involved in the appeal. The admission of the appellant as PW1 establish that respondents have been in possession of the plaint A schedule property and he did not even enter the plaint schedule property after 1980. Appellant earlier filed O.S.216/1981 claiming a

decree for injunction against respondents. Respondents derived the title and possession .Under Ext.B1 it was dismissed. Even in the suit appellant did not seek declaration of his title. Ext.A1 patta was obtained after Ext.B1 judgment. The suit was framed as if respondents are rank trespassers. First appellate court found that in such circumstance, appellant is not entitled to the decree. Courts below rightly dismissed the suit. I find no substantial question of law involved in the appeal.

The appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006